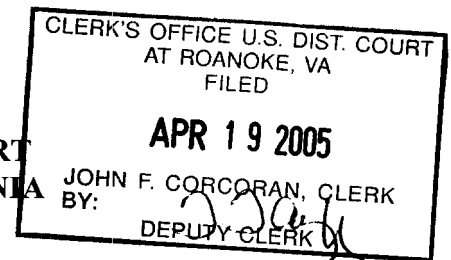


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



TONY R. SELLMON,
Petitioner,

v.

B.G. COMPTON,
Respondent.

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Civil Action No. 7:03-CV-00169

MEMORANDUM OPINION

By: Hon. James C. Turk
Senior United States District Judge

This closed matter is before the court pursuant to a remand from the Court of Appeals for the Fourth Circuit. The Court of Appeals remanded this case for a determination of whether or not Sellmon has shown excusable neglect or good cause to warrant granting an extension of time to file a notice of appeal. On January 12, 2005, this court directed Sellmon to make any arguments relating to this issue. Sellmon filed a timely response to this court's order on February 3, 2005. However, because Sellmon has not demonstrated excusable neglect or good cause, his motion must be denied.

In his response, Sellmon fails to show any excusable neglect or good cause, and instead attempts to convince the court that the judgment did not become final on May 10, 2004. Sellmon argues that this order merely denied some of his claims, while holding his remaining claim open until after Sellmon's parole hearing. Sellmon appears to be confusing and misinterpreting the court's March 15, 2004 order.

On March 15, 2004, this court denied two of Sellmon's three claims and directed the respondent to answer the remaining claim. The respondent replied by informing the court that the Parole Board had granted Sellmon a new parole hearing as requested by Sellmon in his remaining claim. Because the Parole Board granted the requested relief from Sellmon's remaining claim, this court entered a final order dismissing all remaining claims as moot on May 10, 2004. Specifically, the final order stated that "the remaining claims in this action . . . are dismissed as moot and the

action is hereby stricken from the active docket of the court.” The plain text of this order makes clear that it was dismissing all claims and closing the case.

The Court of Appeals remanded this case in order to answer the narrow question of whether or not Sellmon could show any excusable neglect or good cause for failing to file a timely notice of appeal. Because Sellmon has shown neither excusable neglect nor good cause, and has instead attempted to expand the question as to when the judgment became final, this court must deny his motion. An appropriate order will be entered this day.

ENTER: This 19th day of April, 2005



SENIOR UNITED STATES DISTRICT JUDGE